

STATEMENT
OF
ROBERT S. SILBERMAN
DEPUTY MARITIME ADMINISTRATOR
FOR INLAND WATERWAYS AND GREAT LAKES
OF THE
DEPARTMENT OF TRANSPORTATION
BEFORE THE SUBCOMMITTEE ON MERCHANT
MARINE OF THE HOUSE MERCHANT
MARINE AND FISHERIES COMMITTEE
ON
OVERSIGHT OF THE JONES ACT

MAY 3, 1989

STATEMENT OF ROBERT S. SILBERMAN, DEPUTY MARITIME ADMINISTRATOR
FOR INLAND WATERWAYS AND GREAT LAKES OF THE DEPARTMENT OF
TRANSPORTATION, BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE OF THE
HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE ON OVERSIGHT OF THE
JONES ACT.

MAY 3, 1989

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE ON MERCHANT MARINE. MY NAME IS ROBERT S. SILBERMAN, I AM THE DEPUTY MARITIME ADMINISTRATOR FOR INLAND WATERWAYS AND GREAT LAKES OF THE DEPARTMENT OF TRANSPORTATION. BECAUSE THE SUBJECT OF THESE HEARINGS IS OVERSIGHT OF THE JONES ACT, LET ME REAFFIRM SECRETARY SKINNER'S STATEMENTS THAT THIS ADMINISTRATION IS FIRMLY COMMITTED TO PRESERVING THE INTEGRITY OF THE JONES ACT. WE BELIEVE THE ACT ITSELF IS A CORNERSTONE OF THIS NATION'S MARITIME LAWS.

THE JONES ACT IS EMBODIED IN SECTION 27 OF THE MERCHANT MARINE ACT OF 1920. IT ESSENTIALLY PROVIDES THAT MERCHANDISE TRANSPORTED BY WATER BETWEEN POINTS IN THE UNITED STATES MUST TRAVEL IN VESSELS WHICH ARE BUILT IN THE UNITED STATES, OWNED BY UNITED STATES CITIZENS, CREWED BY UNITED STATES CITIZENS, AND DOCUMENTED UNDER THE U.S. FLAG. THERE ARE SIMILAR REQUIREMENTS IMPOSED BY RELATED STATUTES ON VESSELS ENGAGED IN DOMESTIC PASSENGER TRANSPORTATION.

THE PRINCIPLE OF RESERVING A NATION'S COASTWISE TRADE EXCLUSIVELY TO THAT NATION'S OWN VESSELS IS QUITE COMMON AMONG MARITIME NATIONS AND HAS BEEN PART OF THIS COUNTRY'S LAWS SINCE THE FIRST CONGRESS IN 1789. SUCH LAWS, KNOWN COLLECTIVELY AS

"COASTWISE" OR "CABOTAGE" LAWS WERE ORIGINALLY ENACTED BECAUSE CONGRESS RECOGNIZED THE ECONOMIC AND STRATEGIC IMPORTANCE OF THE NATION'S INFANT MARITIME INDUSTRY.

THE JONES ACT, WHEN IT WAS PASSED IN 1920, DID NOT REPRESENT RADICALLY NEW FEDERAL POLICY. RATHER, IT WAS SIMPLY THE CULMINATION OF OVER A CENTURY OF POLICY DEVELOPMENT WHICH CONTINUALLY SOUGHT TO RECONCILE THE ACKNOWLEDGED DESIRABILITY OF A STRONG U.S. MERCHANT FLEET AND SHIPBUILDING INDUSTRY WITH SOME OF THE REALITIES OF COMMERCE, INTERNATIONAL DIPLOMACY, AND DOMESTIC POLITICS. MOST OF THE MAJOR TRADING NATIONS OF THE WORLD HAVE SOME LEGAL REGIME FAVORING THEIR NATIONAL FLAG FLEET IN DOMESTIC TRANSPORTATION. THERE IS AN ANALOGY IN INTERNATIONAL AIR TRANSPORT, WHERE FOREIGN CARRIERS DO NOT PROVIDE DOMESTIC AIR SERVICE WITHIN ANOTHER NATION.

THE JONES ACT IS BEST CHARACTERIZED AS ONE OF THE PRIMARY POLICY TOOLS WHICH THE FEDERAL GOVERNMENT USES TO ACCOMPLISH THE PURPOSE OF THE MERCHANT MARINE ACT OF 1936; I.E., TO FOSTER THE DEVELOPMENT AND ENCOURAGE THE MAINTENANCE OF THE U.S. MERCHANT MARINE. TODAY, DOMESTIC JONES ACT CARRIERS FORM THE NUCLEUS OF THE U.S. MERCHANT MARINE IN THREE IMPORTANT WAYS.

FIRST, THE U.S. MANNING REQUIREMENT PROVIDES A POOL OF TRAINED AND EXPERIENCED CITIZEN MERCHANT MARINERS. NO MARITIME POWER CAN LONG EXIST WITHOUT LOYAL SEAFARERS TO SAIL ITS COMMERCIAL VESSELS DURING WAR AS WELL AS PEACE.

SECOND, THE U.S. VESSEL CONSTRUCTION REQUIREMENT PROVIDES A FOUNDATION FOR THE DOMESTIC SHIPBUILDING AND REPAIR INDUSTRIES. THOSE INDUSTRIES ARE CRITICAL NATIONAL MOBILIZATION RESOURCES.

AND, THIRD, THE DOMESTIC TRADES HAVE BEEN THE SOURCE OF SOME OF THE MOST STRIKING INNOVATIONS IN SHIPPING TECHNOLOGY, INCLUDING CONTAINERIZATION, HIGH SPEED RO/RO VESSELS, AND INTEGRATED TUG/BARGE COMBINATIONS.

IN ADDITION, BY ITS INSISTENCE ON A DOMESTIC FLEET WHICH IS U.S. BUILT, OWNED, AND CREWED, THE JONES ACT ASSURES THAT WE ALWAYS HAVE IN EXISTENCE A WATER TRANSPORTATION CAPABILITY WHICH IS SUBJECT EXCLUSIVELY TO OUR NATIONAL CONTROL, RATHER THAN UNDER THE CONTROL OF FOREIGN OWNERS, MANAGEMENT OR LABOR. SHIPS ARE HIGHLY MOBILE ASSETS WHICH CAN BE MOVED AT THE DISCRETION OF THEIR OWNERS.

THE IMPORTANCE OF THE JONES ACT AND THE CONTRIBUTION OF DOMESTIC WATER TRANSPORTATION COMPANIES TO THE AMERICAN ECONOMY CANNOT BE OVERSTATED. NEARLY 30 PERCENT MORE TONNAGE MOVES ANNUALLY IN DOMESTIC WATERBORNE TRADE THAN IN FOREIGN TRADE, AND PORTS AND WATERWAYS IN 41 OF THE 50 STATES HANDLE SOME FORM OF DOMESTIC SHIPPING.

DOMESTIC VESSELS OF 1,000 GROSS TONS OR MORE CONTAIN OVER 6,700 SHIPBOARD BILLETS WHICH REPRESENT APPROXIMATELY 16,000 JOBS FOR U.S. SEAFARERS. WHEN RELATED JOBS IN VESSELS BELOW 1000 GROSS TONS, SHIPYARDS, PORTS, AND TERMINALS ARE INCLUDED, THE TOTAL EMPLOYMENT IMPACT IS OVER 200,000 JOBS.

YOU HAVE ASKED US TODAY TO DISCUSS SPECIFICALLY THE "BOWATER AMENDMENT" TO THE JONES ACT. THE "BOWATER AMENDMENT" PASSED BY CONGRESS IN 1958, CREATED A NARROW EXCEPTION TO THAT REQUIREMENT OF THE JONES ACT WHICH STATED THAT VESSELS OPERATED IN THE COASTWISE TRADE MUST BE OWNED BY U.S. CITIZENS AS DEFINED IN SECTION 2 OF THE SHIPPING ACT OF 1916. SECTION 2 REQUIRES THE CONTROLLING INTEREST IN A CORPORATION TO BE OWNED BY U.S. CITIZENS. IN THE CASE OF A STOCK CORPORATION WHICH OPERATES A VESSEL IN THE COASTWISE TRADE, NOT LESS THAN 75-PERCENT OF ITS SHARES MUST BE OWNED BY U.S. CITIZENS, FREE FROM ANY TRUST OR FIDUCIARY OBLIGATION IN FAVOR OF ANY PERSON WHO IS NOT A CITIZEN.

BRIEFLY, THE "BOWATER AMENDMENT" DEEMS A CORPORATION TO BE A U.S. CITIZEN FOR LIMITED PURPOSES, SPECIFICALLY, THE OWNERSHIP AND DOCUMENTATION OF VESSELS TO CARRY THE COMPANY'S OWN PROPRIETARY GOODS IN THE COASTWISE TRADE. FOR A CORPORATION TO QUALIFY, AN APPLICATION MUST BE FILED WITH THE COAST GUARD ESTABLISHING THAT (A) A MAJORITY OF THE OFFICERS AND DIRECTORS ARE U.S. CITIZENS; (B) AT LEAST 90 PERCENT OF THE EMPLOYEES RESIDE IN THE U.S.; (C) THE CORPORATION IS ENGAGED PRIMARILY IN A MANUFACTURING OR MINERAL INDUSTRY IN THE U.S.; (D) THE AGGREGATE BOOK VALUE OF VESSELS OWNED BY THE CORPORATION DOES NOT EXCEED 10 PERCENT OF THE AGGREGATE BOOK VALUE OF THE CORPORATION'S ASSETS; AND (E) THE CORPORATION PURCHASES OR PRODUCES IN THE U.S. AT LEAST 75 PERCENT OF THE RAW MATERIALS USED OR SOLD IN ITS OPERATIONS.

THE "BOWATER" AMENDMENT SPECIFICALLY PROHIBITS SUCH COMPANIES FROM TRANSPORTING MERCHANDISE OR PASSENGERS FOR HIRE IN THE COASTWISE TRADE, EXCEPT AS A SERVICE FOR A PARENT OR SUBSIDIARY CORPORATION. PARENT AND SUBSIDIARY CORPORATIONS ARE DEFINED IN RELATION TO PERCENTAGE OF STOCK OWNERSHIP OF, OR BY, THE FILING CORPORATION, AND MUST BE INCORPORATED IN THE U.S. IF A CORPORATION'S STATUS CHANGES AFTER FILING, SO THAT IT FAILS TO MEET ANY OF THE STATUTORY CONDITIONS, ANY DOCUMENTS RECEIVED FROM THE COAST GUARD MUST BE SURRENDERED.

PENALTIES FOR FILING FALSE INFORMATION INCLUDE FORFEITURE OF THE VESSEL OR VESSELS OWNED BY THE COMPANY. VIOLATION OF THE PROPRIETARY CARRIAGE RESTRICTION CAN RESULT IN FORFEITURE OF THE MERCHANDISE OR FINES FOR CARRYING REVENUE PASSENGERS.

BY LOOKING AT THE SPECIFIC REQUIREMENTS OF THE BOWATER AMENDMENT, ONE CAN CLEARLY SEE THAT CONGRESS' INTENT WAS TO ALLOW A COMPANY WHICH WAS NOT IN THE TRANSPORTATION BUSINESS -- BUT WHICH RETAINED INCIDENTAL MARINE TRANSPORTATION ASSETS SOLELY TO SUPPORT ITS CORE MANUFACTURING OR MINING BUSINESS -- TO OPERATE THOSE MARINE ASSETS EVEN IF MORE THAN 25 PERCENT OF ITS STOCK WAS OWNED BY NON-U.S. CITIZENS.

WITHIN THE NARROW RESTRICTIONS IMPOSED BY THIS AMENDMENT, CONGRESS WAS ABLE TO PROVIDE RELIEF FOR QUALIFYING COMPANIES WITHOUT IN ANY WAY HARMING THE ESSENTIAL POLICY OBJECTIVES OF THE JONES ACT. THE VESSELS ARE STILL U.S.-FLAG, U.S.-CREWED, U.S.-BUILT, AND U.S.-REPAIRED AND, SINCE THEY ONLY CARRY CARGO OWNED

BY THE COMPANY ITSELF, DO NOT TAKE EXISTING COMMERCIAL BUSINESS AWAY FROM OTHER COMMON OR CONTRACT CARRIERS. THE MARITIME ADMINISTRATION'S EXPERIENCE WITH THESE PROVISIONS IS RELATIVELY LIMITED, BECAUSE THE COAST GUARD REGULATES THE ISSUANCE OF CERTIFICATES OF COMPLIANCE AND THE CUSTOMS SERVICE HAS THE ENFORCEMENT RESPONSIBILITIES.

FROM OUR PERSPECTIVE, THE BOWATER AMENDMENT APPEARS TO HAVE GENERALLY WORKED WELL AND PROVIDES THE INTENDED RELIEF FOR FILING CORPORATIONS WHICH MEET THE STATUTORY CONDITIONS. TO OUR KNOWLEDGE, UNTIL RECENTLY, THIS NARROW EXCEPTION TO THE JONES ACT HAD NOT SPILLED OVER INTO AREAS WHICH CONGRESS DID NOT INTEND TO AFFECT. HOWEVER, AS YOU KNOW, THE MARITIME ADMINISTRATION IS CURRENTLY IN LITIGATION ON THE SCOPE OF THE "BOWATER AMENDMENT." THE ESSENCE OF THAT LITIGATION IS WHETHER THE MARITIME LAWS SHOULD BE INTERPRETED TO CREATE A NEW, EXPANSIVE OPPORTUNITY FOR FOREIGN-OWNED COMPANIES TO COMPETE IN THE DOMESTIC TRADES. WE OPPOSE SUCH AN INTERPRETATION.

ONE AREA OF THIS LITIGATION RELATES PARTICULARLY TO THE REQUIREMENT FOR MARITIME ADMINISTRATION APPROVAL OF THE "CHARTERING-IN" OF VESSELS BY COMPANIES WHICH HAVE RECEIVED "BOWATER" STATUS, AND THE USE OF THOSE CHARTERED VESSELS FOR THE CARRIAGE OF NON-PROPRIETARY CARGO. WHILE OUR POLICY WITH REGARD TO THE NECESSITY FOR SECTION 9 APPROVALS IS ABUNDANTLY CLEAR,

BECAUSE OF THIS LITIGATION IT HAS NOT BEEN POSSIBLE FOR US TO RECOMMEND ACTION AGAINST POSSIBLE VIOLATORS, AND IT WOULD NOT BE APPROPRIATE FOR US TO GO INTO FURTHER DETAIL CONCERNING THOSE ISSUES BEFORE THE COURT.

WE HAVE BEEN ASKED BY YOUR STAFF TO ADDRESS THE POSSIBLE NEED FOR PUBLIC NOTICE AND HEARING IN CONNECTION WITH THE ISSUANCE BY THE COAST GUARD OF "BOWATER" CERTIFICATES. WE DO NOT BELIEVE THAT THERE IS A NEED FOR MANDATORY HEARING PROCEDURES. THEY WOULD UNDULY BURDEN THE DECISION-MAKING PROCESS AND RAISE LEGITIMATE CONCERNS ABOUT THE CONFIDENTIALITY OF THE PROPOSED MERGERS OF PRIVATE COMPANIES. HOWEVER, MARAD BELIEVES SOME NOTICE MAY BE APPROPRIATE IN ORDER TO PROVIDE JONES ACT OPERATORS THE OPPORTUNITY TO PRESENT RELEVANT INFORMATION.

THE JONES ACT, IN ITS CURRENT FORM, IS STRONGLY SUPPORTED BY SECRETARY SKINNER. WE DO NOT RECOMMEND OPENING THE "BOWATER AMENDMENT" OR ANY OTHER PART OF THE JONES ACT TO INCREASE FOREIGN PARTICIPATION IN THE DOMESTIC WATERBORNE TRADES. PEOPLE WHO HAVE BUILT AND ACQUIRED VESSELS IN RELIANCE ON THE PRESENT SYSTEM SHOULD BE ABLE TO CONTINUE TO RELY ON IT. THE JONES ACT IS VERY IMPORTANT TO OUR ADMINISTRATION OF OTHER STATUTORY AUTHORITIES IN THE SHIPPING ACTS AND THE MERCHANT MARINE ACTS. IT IS, AS I STATED AT THE OUTSET OF MY TESTIMONY, ONE OF THE PRIMARY TOOLS WE USE TO FOSTER THE DEVELOPMENT AND ENCOURAGE THE MAINTENANCE OF THE U.S. MERCHANT MARINE.

THIS CONCLUDES MY STATEMENT, MR. CHAIRMAN, AND I WILL BE
HAPPY TO ANSWER YOUR QUESTIONS AND THOSE OF THE OTHER MEMBERS OF
THE SUBCOMMITTEE.